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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

E.K. WADE,

Plaintiff,

v.

ELAINE CHAO, SECRETARY OF  
LABOR, ET AL.

Defendant.

No. C 06-4725 MJJ

**STIPULATION AND ~~PROPOSED~~  
ORDER DISMISSING COMPLAINT**

Date: December 18, 2007  
Time: 9:30 a.m.  
Courtroom: 11, 19th Floor

The parties stipulate to the dismissal of all claims in the above-captioned complaint.

The dismissal is without prejudice to plaintiff's filing a new complaint.

The parties agree that plaintiff E.K. Wade will file a new complaint no later than 30 days of the Court's Order.

The new complaint will allege that plaintiff has satisfied the jurisdictional prerequisites for filing his claims in federal court.

Specifically, the new complaint will allege that plaintiff has exhausted the MSPB process as of January 17, 2007 when the Federal Circuit affirmed the MSPB's dismissal of plaintiff's claims.

The United States Attorney's Office will accept service of the new complaint and will file a responsive pleading within 60 days of service of the new complaint.

1 The current case – 06-4725 MJJ – will be dismissed and closed.

2 Respectfully submitted,  
3 SCOTT N. SCHOOLS  
4 United States Attorney  
5

6 Dated: December 18, 2007

\_\_\_\_\_/s/\_\_\_\_\_  
7 ANDREW Y.S. CHENG  
8 Assistant United States Attorney  
9

10 Dated: December 18, 2007

\_\_\_\_\_/s/\_\_\_\_\_  
11 E.K. Wade, Plaintiff  
12

13 **PROPOSED ORDER**

14 The Court, having considered the stipulation of the parties, dismisses plaintiff's  
15 complaint in the action – *E.K. Wade v. Elaine Chao*, C 06-4725 MJJ and closes this action. The  
16 dismissal is without prejudice to plaintiff's filing a new complaint that satisfies the jurisdictional  
17 prerequisites of plaintiff's Title VII, the Rehabilitation Act, and the Whistleblower Protection  
18 Act – namely, exhaustion of the MSPB process and any exhaustion of any other appropriate  
19 administrative processes.

20 The United States Attorney's Office will accept service of plaintiff's complaint and will  
21 file any necessary motions to relate the new case to this dismissed case, so that the complaint will  
22 be assigned to Judge Martin J. Jenkins.

23 The Federal Defendant will file a responsive pleading to the new complaint within 60  
24 days of service of the new complaint.  
25

26 IT IS SO ORDERED.

27  
28 DATED: 12/21/2007



CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**STIPULATION AND [PROPOSED] ORDER DISMISSING COMPLAINT**

E.K. Wade v. Elaine Chao, Secretary of Labor, et al.  
Case No. C 06-4725 MJJ

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

- ☒ FIRST CLASS MAIL by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☐ CERTIFIED MAIL (# ) by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☐ PERSONAL SERVICE (BY MESSENGER)
- ☐ FEDERAL EXPRESS
- ☐ FACSIMILE (FAX) Telephone No.: See Below

to the party(ies) addressed as follows:

E. K. Wade  
542 North Civic Drive, Apt. D  
Walnut Creek, CA 94597

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 18, 2007 at San Francisco, California.

/s/  
BONNY WONG  
Legal Assistant